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Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, on his mission to the Russian Federation

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights on his official visit to the Russian Federation from 24 to 28 April 2017. The focus of his visit was to examine whether and to what extent the adoption, maintenance or implementation of unilateral coercive measures impedes the full realization of the rights set forth in the Universal Declaration of Human Rights and other international human rights instruments, in particular the right of individuals and peoples to development.

During his visit, the Special Rapporteur met with a wide range of high-ranking government officials, business people, academics and representatives of United Nations agencies and civil society.

In the report, the Special Rapporteur gives an overview of the unilateral coercive measures imposed on and by the Russian Federation and their impact on the enjoyment of human rights, then reviews the options to address the related challenges. On that basis, the Special Rapporteur addresses his recommendations to the Russian Federation, source countries, the United Nations system and other stakeholders. He proposes a step-by-step approach to removing unilateral coercive measures, starting with those with the most severe impact on the enjoyment of human rights. In the meantime, he advocates the resort to quiet diplomacy to facilitate channels of communications between source and target countries to broaden areas of agreement in keeping with the objective self-interest of the former and of the latter.

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Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, on his mission to the Russian Federation*

I. Introduction

1. The Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Idriss Jazairy, undertook an official visit to the Russian Federation from 24 to 28 April 2017. The aim of the visit was to assess the negative impact that unilateral coercive measures imposed by States or groups of States have on the people living in the Russian Federation.

2. During his visit, the Special Rapporteur met with the Deputy Minister for Foreign Affairs, the Deputy Minister for Labour and Social Protection, the Deputy Finance Minister, the Deputy Minister for Energy, the Chair of the Council of the Federation Committee on Constitutional Legislation and State-Building, and the High Commissioner for Human Rights in the Russian Federation. He also met with senior officials from the Department of Humanitarian Cooperation and Human Rights, the Department of Economic Cooperation of the Ministry of Foreign Affairs, the Ministry of Economic Development, the Federal Service for State Statistics and the Civic Chamber, and regional representatives.

3. The Special Rapporteur held consultations with the Vice-President of the Russian Union of Industrialists and Entrepreneurs, the Vice-President of the Chamber of Commerce and Industry and the First Vice-Chair of the Bank for Development and Foreign Economic Affairs. He also met with representatives of civil society organizations, experts and academics.

4. The Special Rapporteur met with representatives of the United Nations in Moscow. In addition, he consulted with different diplomatic representatives from the Non-Aligned Movement. Unfortunately, despite his requests, he was not able to meet with representatives of the United States of America, the European Union and several European countries. Nonetheless, the information included in the present report regarding unilateral coercive measures taken by individual States and the European Union against the Russian Federation has been shared for factual correction with the respective permanent missions to the United Nations Office at Geneva, which provided some comments and observations on 17 July 2017.

5. The Special Rapporteur expresses his gratitude to the Government of the Russian Federation for the invitation and support provided throughout the visit. He thanks the United Nations High staff in Moscow for their invaluable cooperation and assistance.

6. The Russian Federation invited the Special Rapporteur to visit different regions in the country, as well as the Autonomous Republic of Crimea and the city of Sevastopol (hereinafter "Crimea").[1] The Special Rapporteur declined the invitation to visit Crimea (and other regions), noting that, as an independent expert mandated by the Human Rights Council, he was required to perform his official functions in accordance with the Charter of the United Nations, which includes the principles of sovereignty and non-intervention, and in observance of General Assembly resolutions 68/262 and 71/205.

7. Any reference to Crimea in the present report should be read in the light of General Assembly resolutions 68/262 and 71/205.

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* Circulated in the language of submission and in Russian only.

[1] Definition taken from General Assembly resolution 71/205.

II. Background

8. In the context of the situation in south-eastern regions of Ukraine and relations between the Russian Federation and Ukraine, some three dozen countries have decided to impose unilateral coercive measures on the Russian Federation. These measures include: travel restrictions and the freezing of funds and economic resources of individuals; the blocking of property; sectoral sanctions against certain entities operating in sectors of the Russian economy, including an investment ban and a prohibition on the exportation or importation of certain goods and technology; and limitations on financial transactions.

9. The Russian Federation has responded with similar measures against a number of countries, including a ban on food imports from Australia, Canada, Norway, the United States and the European Union.

III. International legal issues related to unilateral sanctions against the Russian Federation

10. Unilateral sanctions against the Russian Federation qualify as "unilateral coercive measures" to the extent that they have been adopted by States — or regional organizations — without a mandate of the Security Council acting pursuant to Article 41 of the Charter of the United Nations (see A/HRC/30/45, para. 14).

11. It has been rightly noted that "[t]he prevailing view among international law specialists, however, is that autonomous sanctions cannot be legal per se and thus require international legal justification for their imposition".[2]

12. Sanctions on the Russian Federation should be expected to comply with the procedural and substantive conditions for recourse to lawful countermeasures, as set out by the General Assembly in its resolution 56/83 on the responsibility of States for internationally wrongful acts. In particular, the International Law Commission has noted that a "State which resorts to countermeasures based on its unilateral assessment of the situation does so at its own risk and may incur responsibility for its own wrongful conduct in the event of an incorrect assessment".[3]

13. Moreover, as the Special Rapporteur noted in his 2016 report to the General Assembly, "[s]uch responsibility could also be engaged in a situation where, even acting with proper justification, States (or international organizations) are found to have disregarded legal preconditions for recourse to countermeasures, such as the proportionality and reversibility of the measures" (see A/71/287, para. 11).

14. The view has been widely expressed that unilateral sanctions on the Russian Federation qualify as "third-party countermeasures" under international law, to the extent that they aim at responding to grave violations of obligations owed to the international community. However, it is to be noted that the permissibility of third-party countermeasures remains unsettled in international law, and was left open in General Assembly resolution 56/83.[4]

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[2] See E. Moret, T. Biersteker, F. Giumelli et al., "The new deterrent? International sanctions against Russia over the Ukraine crisis" (Graduate Institute of International and Development Studies, Geneva, 2016), annex II.

[3] See report of the International Law Commission at its fifty-third session (A/56/10), chap. IV, E. 2., comment No. 3 on article 49. It has also been noted that, in case of sanctions, "[t]he lawfulness of the action on the international plane depends, in the first place, on the effective occurrence of the international wrongful act by the target State", Tarcisio Gazzini, "The normative element inherent in economic collective enforcement measures: United Nations and European Union practice" in *Les sanctions économiques en droit international/Economic sanctions in international law*, Linos-Alexandre Sicilianos and Laura Picchio Forlati, eds. (Leiden, Martinus Nijhoff, 2004).

[4] See General Assembly resolution 56/83, annex (arts. 48 and 54); see also e.g. Linos-Alexandre Sicilianos, "Countermeasures in response to grave violations of obligations owed to the international community" in *The law of international responsibility*, J. Crawford, A. Pellet and S. Olleson, eds.

IV. Overview of coercive measures in force against the Russian Federation

15. Unilateral coercive measures imposed against the Russian Federation involve two primary autonomous sanctions regimes: those of the United States and those of the European Union. In those sanctions regimes, some measures are directed against targets in the Russian Federation and Ukraine. In the present report, the Special Rapporteur will only focus on those measures targeting the Russian Federation.

16. Measures against the Russian Federation are reported to have been imposed with the purposes of ceasing hostilities in south-eastern regions of Ukraine, negotiating a peace agreement, enforcing a peace agreement and maintaining the territorial integrity of Ukraine. They include individual measures, such as assets freezes and travel bans, and sectoral measures, in the areas of finance, defence and oil services. They have been supplemented by a range of other States, including Australia, Canada, Japan, New Zealand and Ukraine; neighbouring Georgia and the Republic of Moldova; Montenegro and Albania, both European Union candidate countries; and States members of the European Free Trade Association, such as Iceland, Liechtenstein, Norway and Switzerland, which have aligned themselves with the some of the measures adopted by the European Union.[5]

17. The present report will not assess the legality of those measures under public international law. Such an assessment lies outside the scope of the Special Rapporteur's mandate, which focuses solely on the negative impact that unilateral coercive measures may have on the enjoyment of human rights

A. Unilateral coercive measures imposed by the United States

18. In the present section, unilateral coercive measures imposed by the United States will be referred to as "sanctions" for the sole purpose of maintaining the source country's terminology.

Overview and scope

19. The United States imposes sanctions against the Russian Federation and Crimea in the framework of a Ukraine/Russian Federation-related sanctions programme implemented by its Treasury Office of Foreign Assets Control. The sanctions programme started on 6 March 2014 with executive order 13660, issued by the President of the United States.[6]

20. Later, in further response "to the actions and policies of the Government of the Russian Federation, including the purported annexation of the Crimea region of Ukraine", the President issued executive orders 13661, 13662 and 13685 to expanded the scope of the national emergency declared in executive order 13660.In particular, order 13685 requested that additional steps be taken against the Russian Federation, and prohibited the import or export of any goods, services or technology to or from Crimea, or any new investment in Crimea by a United States national, wherever located.

21. On 29 December 2016, the Office of Foreign Assets Control imposed sanctions on five Russian entities and four Russian individuals in connection with their alleged efforts to interfere with the 2016 United States presidential election. The new sanctions were imposed

(Oxford University Press, 2010), pp. 1137-1148; and M. Dawidowicz, "Public law enforcement without public law standards? An analysis of State practice on third-party countermeasures and their relationship to the UN Security Council" in *British Yearbook of International Law*, Vol. 77, iss. 1, pp. 333-418 (January 2007); and M. Dawidowicz, "Third-party countermeasures: A progressive development of international law?" in *Questions of International Law* (June 2016) pp. 3-15.

[5] See, for example, www.consilium.europa.eu/en/press/press-releases/2015/07/28-alignment-russias-action-destabilising-ukraine/.

[6] See www.treasury.gov/resource-center/sanctions/Programs/Documents/ukraine.pdf. Executive order 13660 was issued pursuant to, inter alia, the International Emergency Economic Powers Act and the National Emergencies Act.

pursuant to executive order 13757, effective 29 December 2016, amending order 13694, addressing "cyber-related activities", by expanding the types of significant, malicious cyber-related activities that are liable to be sanctioned.[7] The Office also imposed sanctions on two other individuals in the Russian Federation for having allegedly engaged in significant, malicious cyber-related activities for private financial motives.

22. The means of implementing sanctions are established in regulations of the Office of Foreign Assets Control[8] and in determinations by the Secretary of the Treasury, after consultations with the United States Secretary of State, that the provisions of executive order 13662 shall apply to: (a) "the financial services and energy sectors of the Russian Federation economy";[9] and (b) "the defence and related materiel sector of the Russian Federation economy".[10]

23. Through a system of specific licences, the Office of Foreign Assets Control may consider on a case-by-case basis requests to authorize "transactions that are neither exempt nor covered by a general license". It may also authorize certain types or categories of activities and transactions that would otherwise be prohibited under the Ukraine/Russian Federation-related sanctions programme by issuing a general licence.

24. In summary, United States sanctions on the Russian Federation and Crimea comprise the following categories: (a) blocking sanctions targeting listed individuals and entities; (b) "sectoral" sanctions targeting specific sectors of the Russian economy; and (c) a ban on investment and a trade embargo on Crimea.

Blocking sanctions

25. Under its blocking sanctions, transactions by United States nationals, wherever located or by any person in the United States, are prohibited unless otherwise authorized or exempt, if they involve transferring, paying, exporting, withdrawing, or otherwise dealing in the property or interests in property of an entity or individual included on the Office of Foreign Assets Control's list of specially designated nationals and blocked persons. The property and interests in property of an entity that is 50 per cent or more owned, whether individually or in the aggregate, directly or indirectly, by one or more persons whose property and interests in property are blocked pursuant to any part of title 31 of the Code of Federal Regulations chapter V[11] are also blocked, regardless of whether the entity itself is listed.

26. Similar blocking measures apply to certain legal and natural persons that are now listed on the list of specially designated nationals and blocked persons pursuant to amended executive order 13694 (on "cyberactivities"). In addition to the blocking of assets and

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[7] As originally issued on 1 April 2015, executive order 13694 authorized sanctions to be imposed on any person determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be responsible for or complicit in, or to have engaged in, directly or indirectly, cyber-enabled activities:

- Originating from, or directed by persons located, in whole or in substantial part, outside the United States
- That are reasonably likely to result in, or have materially contributed to, a significant threat to national security, foreign policy, or the economic health or financial stability of the United States
- That have the purpose or effect of resulting in one of four specified harms

Now, executive order 13757 expands the types of cyber-related activities that are sanctionable under order 13694 to include "activities that have the purpose or effect of tampering with, altering, or causing a misappropriation of information with the purpose or effect of interfering with or undermining election processes or institutions".

[8] See www.gpo.gov/fdsys/granule/FR-2014-05-08/2014-10576.

[9] Determination issued on 16 June 2014 by the Secretary of the Treasury, after consultation with the Secretary of State.

[10] Determination issued on 12 September 2014 by the Secretary of the Treasury, after consultation with the Secretary of State.

[11] See www.ecfr.gov/cgi-bin/text-idx?gp=&SID=87e638fe455daf189874f552c9080605&mc=true&tpl=/ecfrbrowse/Title31/31chapterV.tpl.

measures on the prohibition of transactions, the individuals sanctioned pursuant to that order, as amended, are generally subject to a prohibition from entering the United States.

Sectoral sanctions on the Russian economy

27. The sectoral sanctions imposed on specified persons operating in the Russian economy were implemented under executive order 13662 through four directives issued by the Office of Foreign Assets Control. Those directives impose prohibitions on United States nationals and within the United States for certain specified transactions with entities made subject to the relevant directive, as identified on the sectoral sanctions identification list. The property and interests in property of an entity that is 50 per cent or more owned, whether individually or in the aggregate, directly or indirectly, by one or more sanctioned persons are also sanctioned, regardless of whether the entity itself is listed on the list. The property and interests in property of those persons are not blocked, nor are transactions with them prohibited beyond the restrictions.

28. Directive No. 1 of the Office of Foreign Assets Control, as amended, prohibits all transactions in provisions of financing for, and other dealings in, new debt of longer than 30 days maturity or new equity of persons determined to be subject to directive 1, their property, or their interests in property; and all activities related to debt or equity issued before 12 September 2014 that would have been prohibited by the prior version of directive No. 1, which extended to activities involving debt of longer than 90 days maturity or equity if that debt or equity was issued on or after the date a person was determined to be subject to directive No. 1.

29. Directive No. 2, as amended, prohibits transacting in, providing financing for or otherwise dealing in new debt of longer than 90 days' maturity of the persons subject to directive No. 2, their property, or their interests in property.

30. Directive No. 3 prohibits transacting in, providing financing for or otherwise dealing in new debt of longer than 30 days' maturity of the persons subject to directive No. 3, their property, or their interests in property.

31. Directive No. 4 prohibits providing, exporting or re-exporting, directly or indirectly, goods, services (except for financial services) or technology in support of exploration or production for deep-water, Arctic offshore or shale projects that have the potential to produce oil in the Russian Federation or in maritime area claimed by the Russian Federation and extending from its territory, and that involve any person subject to directive No. 4, its property or its interests in property.

B. Unilateral coercive measures imposed by the European Union

Background and overview of legal authorities

32. European sanctions enacted since 2014 in the context of relations between the Russian Federation and Ukraine constitute a complex system involving a number of different legal instruments, most of which have been subject to amendments, expanded or modified over time. At the outset, it must be noted that some European Union sanctions are applied specifically on the Russian Federation — and some of its officials, individuals, entities and a variety of economic sectors and activities — while other sanctions targeting Crimea are technically considered — in line with the policy of the European Union not to recognize the "annexation" of Crimea by the Russian Federation — as applied on Ukraine.

Sanctions on the Russian Federation

33. The sanctions regime implemented since July 2014 and subsequently extended to the present day[12] (measures in force as at March 2017) is described below.

[12] Relevant legal instruments adopted at the European Union level are: Council Decision 2014/512/CFSP (OJ L 229, 31.7.2014, p. 13) and Council Regulation (EU) No 833/2014 (OJ L 229, 31.7.2014, p. 1), with corrigendum (OJ L 246, 21.8.2014, p. 59). Later amended by Council Decision

Arms embargo

34. In July 2014, the European Union enacted an embargo on the import and export of arms and related material to or from the Russian Federation and on related materiel and services, extending also to dual-use goods, technology and related services.[13]

Restrictions on exports of energy-related equipment

35. The European Union put in place controls on export of certain equipment for the Russian energy industry (relating to deep-water, Arctic or shale oil projects). Under that regime, exports of certain energy-related equipment and technology to the Russian Federation are subject to prior authorization by competent authorities of European Union member States. Export licenses are to be denied if products are destined for oil exploration and production in waters deeper than 150 metres or in the offshore area north of the Arctic Circle, or projects that have the potential to produce oil from resources located in shale formations by way of hydraulic fracturing. The following services necessary for the above-mentioned projects may not be supplied: drilling, well testing, logging and completion services and supply of specialized floating vessels.[14]

Financial restrictions

36. European Union sanctions also include restrictions on the issuance of or trade in certain "bonds, equity or similar financial instruments". European Union nationals and companies therefore may no longer buy or sell new bonds, equity or similar financial instruments with a maturity exceeding 30 days, issued by five major state-owned Russian banks; three major Russian energy companies; three major Russian defence companies; or subsidiaries outside the European Union of the entities above or those acting on their behalf or at their direction. Assistance in relation to the issuing of such financial instruments is also prohibited. European Union nationals and companies may also not provide loans with a maturity exceeding 30 days to the entities described above.[15]

Targeted measures

37. The European Union had applied asset freezes and visa bans to 150 persons, while 37 entities have been subject to asset freezes in the European Union. That includes persons and entities "responsible for action against Ukraine's territorial integrity, persons providing support to or benefitting Russian decision makers and 13 entities in Crimea and Sevastopol that were confiscated or that have benefitted from a transfer of ownership contrary to Ukrainian law".[16]

C. Unilateral coercive measures imposed by other States

Canada

38. Canada has applied unilateral coercive measures on the Russian Federation that closely mirror those taken by the United States and the European Union, under its Special Economic Measures Act. On 17 March 2014, its "Special Economic Measures (Russia) Regulations" came into force and have been amended a number of times since then. The measures include an asset freeze and dealings prohibition on designated persons, including

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2014/659/CFSP (OJ L 271, 12.9.2014, p. 54) and Council Regulation (EU) No 960/2014 (OJ L 271, 12.9.2014, p. 3), Council Decision 2014/872/CFSP (OJ L 349, 5.12.2014, p. 58) and Council Regulation (EU) No 1290/2014 (OJ L 349, 5.12.2014, p. 20), Council Decision (CFSP) 2015/1764 (OJ L 257, 2.10.2015, p. 42), and Council Decision (CFSP) 2016/1071 (OJ L 178, 2.7.2016, p. 21).

[13] "EU sanctions against Russia over Ukraine crisis", European Union Newsroom, 16 March 2017, available at https://europa.eu/newsroom/highlights/special-coverage/eu-sanctions-against-russia-over-ukraine-crisis_en.

[14] See https://europa.eu/newsroom/highlights/special-coverage/eu-sanctions-against-russia-over-ukraine-crisis_en.

[15] Ibid.

[16] Ibid.

individuals and entities. It is prohibited in particular for any person in Canada or any Canadian outside Canada to enter into or facilitate, directly or indirectly, any transaction — regarding property, financial or other services — related to a designated person.

39. The aforementioned regulations also impose restrictions on the financial and energy sectors. With some exceptions, they prohibit any person in Canada or Canadians abroad from dealing in new debt of longer than 30 days' maturity in relation to a number of listed entities, or 90 days maturity in relation to other entities. In addition, they prohibit any person in Canada or Canadians abroad from dealing in new securities in relation to listed entities; and prohibit the export, sale, supply or shipping of certain goods intended for use in offshore oil (depth greater than 500 metres), shale oil or Arctic oil exploration and production. That includes a ban on the provision of any financial, technical or other services related to the goods subject to this prohibition. Causing, assisting or promoting prohibited activities is likewise prohibited.[17]

Australia

40. Australia implements an autonomous sanctions regime in relation to the Russian Federation that started in March 2014. The measures currently include restrictions on the export or supply of goods, restrictions on the export or provision of service, on the import, purchase and transport of goods, on commercial activities, targeted financial sanctions and travel bans.[18]

Norway

41. Norway has adopted restrictive measures based on the situation in Ukraine, corresponding to the measures adopted by the European Union. This encompasses asset freeze measures and travel restrictions and limitations on the provision of goods and services to the military, energy and financial sectors of the Russian Federation. Particular measures apply to trade and investments involving Crimea.[19]

Switzerland

42. In March 2014, Switzerland decided not to align itself with the sanctions taken by the European Union against the Russian Federation in relation to the situation in Ukraine. However, Switzerland took measures that serve to avoid the circumvention of international sanctions in relation to the situation of Ukraine over Swiss territory. Those measures reflect the Swiss policy of neutrality and the non-recognition of the annexation of Crimea by the Russian Federation. They include various prohibitions, as well as notification and authorization requirements for certain financial and commercial affairs.

Japan

43. Japan announced in July 2014 an asset freeze in Japan of the individuals and organizations considered to have been directly involved in the annexation of Crimea and destabilization of eastern Ukraine. It announced publicly that it would take coordinated action in line with the position of the European Union with regard to the new projects for the Russian Federation of the European Bank for Reconstruction and Development.[20]

New Zealand

44. In 2014, New Zealand suspended negotiations on a free-trade agreement following events in Ukraine.[21] It has also applied an entry ban to a list of individuals.

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[17] See www.international.gc.ca/sanctions/countries-pays/Russia-Russie.aspx?lang=eng.

[18] See http://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/russia.aspx.

[19] See www.regjeringen.no/en/aktuelt/Restrictive-measures-against-Russia-/id765896/.

[20] See www.mofa.go.jp/press/release/press2e_000003.html.

[21] See www.mfat.govt.nz/en/countries-and-regions/europe/russia/.

V. Unilateral coercive measures imposed as "countermeasures" by the Russian Federation

45. The Russian Federation has imposed several measures in response to the unilateral coercive measures applied by the United States, the European Union and other countries following the events in Crimea and eastern Ukraine.

46. On 20 March 2014, the Russian Federation imposed visa bans against nine United States officials, including a number of senators and presidential assistants. On 24 March 2014, it imposed visa bans on 13 Canadian officials, including members of Parliament. Similar measures against European officials were only introduced in May 2015 with the release of a blacklist of 89 European Union officials and politicians banned from entering the Russian Federation. The list remains active.

47. On 6 August 2014, the Russian Federation started to impose economic coercive measures, consisting of a one-year ban on agricultural products and foodstuffs, as well as a visa ban list. The European Union protested what it considered to be the arbitrary inclusion of those on the visa ban list.

48. The Government of the Russian Federation argues that its sanctions represent a legitimate form of retaliation. The federal customs service released a list of products that had been banned from importation into the Russian Federation from Canada, the United States and the European Union. The list included poultry, fish, seafood, milk and milk products, vegetables, fruits, nuts, meat of bovine animals, pork and meat products.

VI. Assessment of the adverse impact of unilateral coercive measures on human rights

49. Most of the cases of unilateral coercive measures investigated by the Special Rapporteur since the mandate was created have involved measures imposed on developing countries. This is the first time that the mandate has addressed unilateral coercive measures targeting such a powerful and strategically important player of the international community. The high level of integration of the Russian Federation in the global economy and the capacity of its economy to react immediately to a changing reality makes this a truly unique case.

50. Sanctions are concerted among European Union member States and the United States and other source countries targeting the Russian Federation, but as far as implementation is concerned the measures vary to a certain degree. In response to the unilateral coercive measures, and as indicated above, the Russian Federation has applied its own countermeasures that have entailed costs for both source and target countries.

Impact of measures taken

51. Application of the unilateral coercive measures began at the start of 2014, a time when the price of oil fell substantially. Thus, two shocks occurred simultaneously: the "oil shock" and the "sanctions shock". In view of the complexity of the mix of those causes, it is difficult to determine the discrete impact of the sanctions shock. According to some unofficial estimates provided to the Special Rapporteur in Moscow, they may have caused at most an average reduction of 1 per cent of the gross domestic product (GDP) of the Russian Federation between 2014 and 2016. It remains that the main adverse impact of the reversal of economic fortunes was attributable to the drop in oil prices.

52. The following evolution of general living standards has been observed on the basis of the data provided by the Federal State Statistics Service; part of the evolution can clearly be ascribed to the "sanctions shock", though it is impossible to quantify precisely to what extent:

(a) The trend of overall personal income of the population, which had been increasing at a rate of 4.6 per cent in 2012 and 4 per cent in 2013, was reversed thereafter.

falling successively by 0.7, 3.2 and 5.9 per cent for the following years up to and including the first quarter of 2016;

(b) The number of people living below the poverty line (defined to be 10,000 roubles), which had been falling since 1992 with very few exceptions, rose from 15.5 million in 2013 to 19.8 million in 2016, or 13.5 per cent of the total population;

(c) Of those living under the poverty line, some of the most vulnerable population groups — the 7-16 age group, women of working age and pensioners — were reported to have been most affected.

53. In terms of macroeconomic analysis, the combined impact of the two shocks reduced growth from 1.3 per cent in 2013 to 0.7 per cent in 2014 and to - 2.8 per cent in 2015. As a result of adaptation to the post-shock situation, there was a turnaround in economic activity already in the first quarter of 2016, with a negative growth rate of - 0.02 per cent, despite the fact that oil prices remained low. That rate moved back into positive territory in 2017 without any lifting of unilateral coercive measures. Over the past 12 months, the rouble appreciated by 15 per cent against the dollar. This is evidence of a successful adjustment.

54. While the unemployment rate overall remained around 5.5 to 5.6 per cent, small and medium-sized enterprises lost over 15 per cent of their employees over that period and were incited to reduce investment by the climate of unpredictability resulting from the sanctions.

55. The reasons why the impact of economic sanctions on the enjoyment of human rights was not more severe in the country seem related to the following facts:

(a) The Government applied very effectively a counter-cyclical policy by letting the rouble float and by increasing the share of the State sector to substitute for the sanction-imposed ban on foreign funding for the corporate sector beyond 30 days, by reducing considerably the rate of inflation through conservative management of the economy and by ex-post compensation of inflation losses incurred by pensioners;

(b) The economy demonstrated great resilience and a capacity to adapt to new circumstances through Government-assisted restructuring to promote local funding of projects formerly funded by external sources;

(c) The diversification of the economy away from oil was given new impetus;

(d) Emphasis on research was increased, returning to an earlier stage when, in many sectors, including space technology, the Russian Federation was at the forefront (it should be noted that, according to Russian officials, cooperation with the United States in advanced space technology was maintained, including for the supply of engines for spacecraft, despite the ban on the export of advanced drilling technology by the United States); this enabled the Russian Federation to enhance its oil production in the Arctic by developing its own capacities for horizontal drilling and its production of shale oil, for which it had previously relied on foreign partners;

(e) Effective import substitution technologies were put in place, in particular in agriculture, to dispense with imports from the European Union that were the subject of retaliatory measures;

(f) A policy was quickly introduced to pivot towards other partners in Asia and other regions.

56. As in many other countries targeted by sanctions, there was a "rally around the flag" reaction, which led the population to accept the inconveniences caused by the unilateral coercive measures.

Rationale of the unilateral coercive measures applied to the Russian Federation

57. The mandate is not competent to discuss the adequacy of the unilateral coercive measures applied to the Russian Federation in terms of the political issues that led to their imposition. The present assessment is therefore limited to the consistency of the measures adopted.

58. The Russian case study offers an opportunity to review the effectiveness of unilateral coercive measures applied by large advanced economies against one another. The example of the Russian Federation demonstrates the expected versatility of a relatively well-off country with a variety of resources, a highly trained population and a multiplicity of trading partners.

59. The adverse human rights impacts of the measures has been mitigated by the fact that they were not all-encompassing, unlike previous measures against certain developing countries that the mandate has reviewed.

60. In a context of globalization, for a country like the Russian Federation, which is fully integrated into the world economy, measures for trade diversion — whether through protectionism or through unilateral coercive measures — can be self-defeating if they lead to a "beggar-thy-neighbour" policy. It is fortunate therefore that the retaliatory measures themselves were limited in scope.

61. Furthermore, in such a globalized context, one must not lose sight of the possible backlash of unilateral measures, even without retaliation. Thus, for instance, one of the largest banks in the Russian Federation, Sberbank, has a part of its capital in equities of which one third is owned by foreign investors from sanctioning countries. Thus, when the bank cannot obtain foreign financing above 30 days for its clients, its profits are affected, which, in turn, reduces the price of its shares and causes losses for their owners also in source countries. Furthermore, every year the State floats internationally 10-year euro-dollar bonds that are reserved for foreign purchasers and are heavily subscribed. In addition, every week it auctions other shorter-term bonds in roubles that are also subscribed by foreign buyers. Rationing of foreign loans to the Russian economy is therefore of limited effectiveness.

62. Different data are provided by the media and academic circles in source countries estimating the cost incurred through the measures by source countries, especially in the European Union.

63. The most credible approximation is of $3.2 billion a month, according to a working paper by the Centre d'Etudes Prospectives et d'Informations Internationales.[32] In an interview with the Special Rapporteur, European farmers and a confederation of European agricultural cooperatives deplored that the losses were attributable to a political dispute between the European Union and the Russian Federation, in which European Union farmers had no role or responsibility yet were the ones that had to "pay the price".[33]

64. The rough estimate of the adverse impact of the sanctions on the Russian Federation, if disentangled from the oil shock, is an average loss of 1 per cent of GDP. That seems to be a reasonable figure since, after "digesting" the oil shock, the difference between actual and potential GDP for 2017 is of about 0.80 per cent according to the International Monetary Fund.[34] That output gap would amount to a direct loss therefore of some $15 billion per annum for the Russian Federation or a total of $55 billion so far.

65. The resulting overall income loss of $155 billion is shared by source and target countries. Although both source and target countries can internalize those losses, it is not clear that any partner is cowed by them or indeed that any rights holder, least of all European smallholder farmers, benefits from them. Meanwhile, business opportunities are forgone, curtailing the right to development of trading partners. Even if direct losses to the Russian Federation from unilateral coercive measures were twice as high as provided in the above estimate, source countries are having to suffer equally or more from the sanctions than the country they target. They may also be more vulnerable as, unlike the Russian Federation, they do not all have a consistent international trade surplus or such high foreign exchange reserves, which, in the case of the Russian Federation, remained consistently

[32] Available from www.cepii.fr/PDF_PUB/wp/2016/wp2016-16.pdf.

[33] See also www.copa-cogeca.be/Download.ashx?ID=1402103&fmt=pdf, and the report of the Special Rapporteur (A/HRC/36/44/Add.2).

[34] See www.economist.com/news/economic-and-financial-indicators/21722184-output-gaps.

above $300 billion since sanctions were applied.[37] So, while the sanctions were more political than economic, they have led in the process to a regrettable deterioration of the standard of living of the most vulnerable population groups in the Russian Federation and have also adversely affected smallholder farmers in Europe.

VII. Observations and recommendations

66. **The wave of globalization that has engulfed the Russian Federation has spread the value chain across its borders with Europe and to a lesser extent has stretched to the United States. It is therefore becoming realistically impossible to disentangle the links of that value chain in a way that would introduce a clean cut of those links situated in the Russian Federation without weakening the rest of the chain through what has misleadingly been referred to come to as "surgically accurate" measures.**

67. **The unilateral coercive measures are intended to serve as a deterrent to the Russian Federation in the context of the prevailing political standoff in the region. They do however carry unintended effects on producers that have nothing to do with the situation, both in Europe and among the most vulnerable groups in the Russian Federation. The Special Rapporteur considers that, after three years of implementation of unilateral coercive measures targeting the Russian Federation, a review of their effectiveness in achieving their proclaimed goal is overdue.**

68. **The Special Rapporteur recommends that the review be engaged upon without delay in the search for effectiveness in the pursuit of desired outcomes and in a way that spares innocent civilians in source and target countries from unintended adverse human rights impacts.**

69. **Targeted sanctions have been imposed on certain individuals so as to avoid unintended damage on innocent people. The impact they have on due process and the rule of law has already been discussed in previous reports of the Special Rapporteur to the Human Rights Council and the General Assembly. However, during his visit to Moscow, the Special Rapporteur was informed that humanitarian exemptions from sanctions applied by the European Union are not being systematically applied to "designated persons". Thus, a Russian businesswoman whose spouse was hospitalized in a western European clinic, found out upon attempting payment of her medical bill that his western bank account had been blocked and could not be drawn upon even for such humanitarian items of expenditure. This is all the more surprising since competent European Union authorities are committed to taking into account the "fundamental rights of designated persons and entities when granting exemptions" as provided by the European Union Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the European Union Common Foreign and Security Policy.**

70. **The Special Rapporteur thus recommends a clear recognition that the competent authorities are under a legal obligation to provide systematically for effective humanitarian exceptions in sanctions instruments. As stated in the Guidelines, such mandatory humanitarian exceptions should cover, inter alia, the "basic needs of designated persons ... including for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums and public utility charges", and humanitarian purposes, such as, for example, delivering or facilitating the delivery of assistance, including medical supplies, food or the transfer of humanitarian workers and related assistance or for evacuations from a targeted country. Moreover, those exceptions should be notified to banks from all source countries and to banks accepting extraterritorial implementation of such individual sanctions by source countries, along with any decision to block individual accounts.**

71. **The Special Rapporteur also recommends that priority attention be given to ensuring immunity from unilateral coercive measures for people elected to a**

[37] See *The Economist*, June 10-16 2017, p. 62.

parliamentary assembly, who are being targeted for action taken as decided democratically by public suffrage and who are thereby exercising their function exclusively on the basis of compliance with a national constitution. Parliamentary immunity is recognized worldwide and this must be for good reason.

72. The Special Rapporteur heard from official Russian and Ukrainian sources alike that the people in Crimea are those who suffer most from the unilateral coercive measures currently in force. The Special Rapporteur considers that they should not be made to pay collectively for what is a complex political crisis over which they have no control, and that their sufferings should not serve as an argument to solve political differences.

73. In accordance with General Assembly resolution 71/205, the Special Rapporteur reiterates his call on the Russian Federation to ensure the proper and unimpeded access of international human rights monitoring missions to Crimea, and on Ukraine to allow access to its territory in accordance with its national legislation and relevant international law standards. An official visit to Crimea to assess the adverse effect of unilateral coercive measures on the population is overdue. Either the present mandate holder or another concerned with specific basic rights that appear to be in jeopardy should be given an opportunity to gain access to that territory in compliance with international law.

74. Finally, the Special Rapporteur reiterates with respect to his mandate as set out in Human Rights Council resolution 27/21, adopted by majority vote, his previous recommendation made pursuant to his visit to the Sudan, i.e. that diplomatic missions of States that have not supported the resolution establishing a given mandate nevertheless accept, if the resolution was adopted by the Human Rights Council, to cooperate in good faith with the relevant mandate holder during his or her country visits. The latter should not be penalized for the fact that his was not a consensus mandate as he has no responsibility for the situation and is only following the instructions of the Council. An implicit group position for diplomatic missions not to engage with such mandates during field visits would deprive those who take it of the moral authority to criticize States from other groups failing to play by the rules of the Council. If generalized, such a position could lead to the undoing of the Human Rights Council itself, of which the special procedures are a key component.